IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22/11/2002

Coram

The Honourable Mr.Justice M. KARPAGAVINAYAGAM

CRIMINAL APPEAL No.411 of 1995

Rama Rao ..Appellant

-Vs-

State by
Inspector of Police,
SPE/CBI/ACB, Madras
R.C.No.3/1984 ..Respondent

Criminal Appeal against the judgment dated 17.3.1995 in Spl.C.C.No. 5 of 1985 on the file of the Special Judge, Pondicherry.

!For Appellant : Mr. A.V. Somasundaram for
M/s.Lakshmi Priya Associates.

^For Respondent : Mr. N. Ranganathan,
Spl.P.P. for CBI cases.

:J U D G M E N T

Rama Rao, the appellant herein was convicted for the offence under Section 409 I.P.C. and sentenced to undergo R.I. for two years and to pay a fine of Rs.2,000/-. He was also convicted for the offence under Section 5(1)(c) read with 5(2) of the Prevention of Corruption Act, 1947 and sentenced to undergo R.I. for one year and to pay a fine of Rs.1,000/-. Besides this, the appellant was directed to reimburse the misappropriated amount of rs.23,420/- to the State, in default, he has to undergo R.I. for one year. Challenging the same, the present appeal has been filed by the appellant herein.

2. The case of the prosecution in brief is as follows:
"(a) The appellant was the L.D.C. Bill Collector in the Office of the Junior Engineer, Electricity Department, Yanam. D.Krishnamurthy (P.W.1) was the Superintending Engineer for the entire Electricity Department for the Union Territory of Pondicherry during that period. G.Krishnamurthy (P.W.2) was the Executive Engineer working under the control of P.W.1 at Karaikal having jurisdiction over Yanam. P.W.3 Abdul Hameed, Sub Inspector of Bill

Collections, Electricity Department working under P.W.2 at Karaikal. P.W.4 Ramakrishna Rangan was the Assistant Engineer under the control of P.W.2 at Karaikal. P.W.5 R. Dattarayulu was the Executive Engineer at Pondicherry working under the control of P.W.1.
(b) On 28.10.1983, a complaint was received by P.W.1, the Superintending Engineer from Sri Gayathri Rice Mill against the misconduct of the public servants D.Sathiyamoorthy, Assistant Engineer and Nageswara Rao. Junior Engineer in the Yanam Electricity Department.

(c) On 21.11.1983, P.W.1 directed P.W.2 to conduct a probe on the said complaint by the order Ex.P6. Accordingly, P.W.2 went to Yanam and inspected the Electricity Office. He found irregularities committed by the said Sathiyamoorthy, Assistant Engineer and Nageswara Rao, Junior Engineer in respect of the temporary power connection to Gayathri Mill and other mills.

During the course of inspection, he also found various amounts collected from the consumers of electricity by the accused have not been credited into and the same have been misappropriated.

(d) On finding that the accused/appellant committed various irregularities, P.W.2 sent a report Ex.P10 dated 20.12.1983 to P.W.1. He also requested P.W.1 to send some officials to Yanam Electricity Office to make a further probe for verification of the original receipts issued by the accused. Accordingly, P.W.5 R.Dattatrayulu, Assistant Executive Engineer, Electricity Department, Pondicherry was sent to Yanam for inspection of the records. P.Ws.3 and 4 also were sent for verification of the duplicate and triplicate receipts and petty cash books maintained by the accused.

(e) P.W.3 after verification of the records found out that various duplicate and triplicate receipts and petty cash books maintained by the accused were falsified by him. Therefore, he submitted reports Ex.P31 dated 14.1.1984 and P32 dated 18.2.1984 to P.W.2. P.W.4 also conducted inspection and noticed that the accused adopted the same modus operandi in falsifying so many receipts. He obtained the statement Ex.P38 from the accused and submitted it along with his report Ex.P3 7 to P.W.2. Consequently, P.W.2 sent his report Ex.P9 dated 19.1.198 4 to P.W.1, the Superintending Engineer.

(f) Thereafter, P.W.2, the Executive Engineer issued a memorandum to the accused along with a statement of inspection and asked him to pay the misappropriated amounts. The accused sent a letter Ex.41 dated 22.3.1994 to P.W.2 requesting to permit him to peruse the original, duplicate and triplicate receipts. Accordingly, he was permitted to peruse the records. Then on 16.5.1984, the accused sent a letter Ex.P47 denying the allegations of misappropriation.

(g) Then, P.W.15 Mr.N.Pazhanisamy, the Deputy Secretary, Government of Pondicherry, on receipt of reports Ex.P157 and P158, sent a complaint to the C.B.I., Madras on 20.1.1984. The complaint is Ex.P156.

(h) P.W.14, the Inspector of Police, SPE, CBI, Madras received the

complaint and registered the case. The case was registered against the accused as well as others for various offences including the offence under the prevention of Corruption Act.

(i) During investigation, P.W.14, the Inspector of Police obtained the specimen signatures from the accused and collected the standard writings of the accused and sent them for comparison. P.W.13 Handwriting Expert sent a report stating that the accused has written the documents in question.

(j) After getting sanction Ex.P1 from P.W.1, the Superintending Engineer, P.W.14, the Inspector of Police filed the charge sheet against the accused under Section 409 I.P.C. and Section 5(1)(c) read with 5(2) of the Prevention of Corruption Act, 1947 for misappropriation of Rs.39,594/-."

3. After trial, when the accused was examined under Section 313 Cr. P.C., he merely denied his complicity in the crime.

4. The trial Court, on an appreciation of the materials available on record, concluded that the prosecution has established its case against the accused beyond reasonable doubt and convicted him under Section 409 I.P.C. and under Section 5(1)(c) read with 5(2) of the Prevention of Corruption Act and sentenced him thereunder. Hence, the appeal aggrieved by the same.

5. The learned counsel for the appellant would make the following contentions:
"(1) For proving the offence under Section 409 I.P.C. and Section 5(1)(c) of the Prevention of Corruption Act, the prosecution has to prove that the accused was entrusted with the collection of funds from the consumers and those funds entrusted to him has been misappropriated after manipulation. The main ingredient is absent in this case as there is no evidence for the same. There are discrepancies as well as contradictions with reference to the amount of misappropriation and the period of offence in Ex.P1, the charges framed by the Court and the findings given by the court. The vital documents like consumer meter cards, Registers, Bank chalans showing the actual remittances into the Bank, the Demand Notes were not produced before the court. That apart, some of the consumers who are the material witnesses were not examined. Admittedly, there is no written complaint received from the consumers. Even before the C.B.I. took up investigation, the accused sent letters Ex.P43 and P47 denying the allegation of misappropriation. Though the charge was for the misappropriation of Rs.39,59 4/-, the trial Court found that the amount of misappropriation was only Rs.23,420/-. Apart from the sentence imposed for the offences tried, the trial Court directed the accused to reimburse the amount of Rs.23,420/-, the misappropriated amount to the State and in default in paying the amount, he has been sentenced to undergo R.I. for one year. For directing the reimbursement of the amount and imposing the default sentence, there is no provision empowering the trial Court to pass such order. Therefore, the conviction is illegal.

(2) Ex.P1 sanction order has not been granted by the competent authority. P.W.1 is only the Superintending Engineer. The appointment of the accused to the post of L.D.C. was made by the General Administration

Department. In the absence of sanction granted by the said department, the cognizance on the above prosecution is not valid. The relevant documents have not been filed to prove the particulars regarding the appointing authority. Furthermore, the sanction Ex.P1 does not contain the reasons for satisfaction to prosecute the accused and as such, the same cannot be a proper sanction. Therefore, the prosecution is vitiated. In order to substantiate his plea, he would refer to the following authorities:
1) CENTRAL BUREAU OF INVESTIGATION v. V.K. SEHGAL (A.I.R.1999 S.C.3706);
2) MADAN MOHAN v. STATE OF UTTAR PRADESH (A.I.R.1954 S.C.637);
3) N.M. RAJENDRAN v. THE STATE (1995 CRI.L.J.4195);
4) BAIKUNTHANATH MOHANTY v. STATE OF ORISSA (1985 CRI.L.J.56 3);
5) MOHD. IQBAL AHMED v. STATE OF A.P. (A.I.R.1979 S.C.677);
6) DEEN MOHAMMED v. STATE REP. BY C.S.C.I.D., CUDDALORE (1996(1) MWN (Cr.).

6. In regard to the above submissions, Mr.N.Ranganathan, the learned counsel for the respondent would point out various materials to show that the accused was entrusted with the duty of collecting the electricity charges from the consumers and he created false records by making entry only for lesser amounts, even though he issued original receipts to consumers for the amounts received from them and thereby, he committed misappropriation to the tune of several thousands. With reference to the sanction, it is submitted that the sanction order Ex.P1 is a valid one as P.W.1 is the authority to remove the accused and furthermore, under Section 465 Cr.P.C., the conviction cannot be set aside merely on the basis of any error, omission or irregularity in the sanction obtained for prosecution unless a failure of justice has been occasioned thereby. He would cite the decisions in SHIVENDRA KUMAR v. STATE OF MAHARASHTRA (2002 S.C.C. (Cri) 564) and RAMANATHAN v. STATE (1999 M.L.J.R.(Crl.) 454.

7. I have carefully considered the respective submissions made by the counsel for the parties and also gone through the records.

8. On a careful scrutiny of the materials available on record, I am of the view that the contentions urged by the counsel for the appellant do not deserve acceptance. To arrive at this conclusion, the reasons are given as below.

9. According to P.W.2 G. Krishnamurthy, the Executive Engineer, Electricity Department, Pondicherry, who is having control over the accused, the accused was entrusted with the duty of collecting the electricity charges from the consumers. Ex.P11 memorandum dated 21.7.1982 and Ex.P12 letter dated

13.10.1982 would support his version. Ex.P13 is the circular dated 31.1.1979 stipulating the duties and responsibilities of the Cashier of the Electricity Department.

10. According to the prosecution, the accused collected the amounts

from the consumers and issued original receipts form the said amounts, but while preparing the duplicate and triplicate receipts which were kept in the office, he made entries with reference to the lesser amounts in the names of the same parties and misappropriated the remaining amounts. The materials to prove that the amounts had been collected as electricity charges have been placed through oral evidence through P.Ws.7, 8, 10, 11 and 12. The evidence of the official witnesses, namely P.Ws.2 to 5 and 13 would corroborate the same.

11. According to P.W.7, who is the representative of the Padma Balaji Rice Mills, he paid Rs.13,035/- towards electricity charges to the accused. He was assisted by the Clerks P.W.8 and P.W.10. The payment of the said charges had been entered into the day book Ex.P41. In Ex.P86, the original receipt, it is mentioned as Rs.13,035/-. But, in the duplicate and triplicate receipts and petty cash book, Exs.P87, P88 and P89 respectively prepared by the accused would show that only receipt of Rs.21/- has been endorsed as spoken to by P.W.5. According to P.W.13, the Handwriting Expert and P.W.9, the Line Inspector, who is acquainted with the signature of the accused, those documents Exs.P86 to P89 are in the handwriting of the accused.

12. Similarly, regarding the electricity charges paid by Sri Sumuga Veereswara Rice Mill, P.W.10 who was looking after the accounts of the said Mill, stated that he made the payment of Rs.6,425.70 to the accused under the original receipt Ex.P137A. In the day book Ex.P146, the said amount has been mentioned. But, the corresponding duplicate and triplicate receipts Ex.P137B and P137C would show that the entry was made for a sum of Rs.2,816.70 instead of Rs.6,425.70.

13. Similarly, Rs.3,333/- was paid to the accused by the Lakshmi Ganesh Modern Rice Mill and original receipt Ex.P139A was obtained from the accused. P.W.11, the Manager of the said Mill would speak about the payment and the receipt of the original receipt Ex.P139A from the accused. The entries were made in Ex.P148, the day book and Ex.P14 8A, the relevant page. But, on inspection by P.W.5, it was found from the duplicate and triplicate receipts Exs.P139B and P139C that only a sum of Rs.8.45 was entered instead of Rs.3,333/-.

14. In respect of the payment of Rs.5,467/- and Rs.4,834.50 towards electricity charges by Sri Venkateswara Rice Mill, another consumer, P.W.12 would clearly state that he made the payment of Rs.5,467/- on 29.4.1983 and obtained receipt Ex.P96 and on 7.5.1983, he paid Rs.4,834.50 towards the electricity charges to the accused and obtained receipt Ex.P149. Then, P.W.3 cross-checked the other records. Ex.P97 duplicate receipt and Ex.P98 triplicate receipt would show that the entries were made only for lesser amount, Rs.1,350.50 instead of Rs.5,467/. In regard to the other payment of Rs.4834.50 entrusted to the accused by P.W.12, he would specifically state that he made the payment to the accused on 7.5.1983 and obtained the receipt Ex.P149. But, in the petty cash book maintained in the department, the accused made an entry only in respect of Rs.1,350.30 instead of Rs.4,834.50.

15. The fact that all the entries were made by the accused has been

established through the evidence of P.W.9, the Line Inspector P.W.9, who is acquainted with the signature of the accused, and P.W.13, the Handwriting Expert. Under those circumstances, the contentions that he was not entrusted with the duty of collecting electricity charges, that he has not collected any charges and that the consumers have not been examined, all would fail.

16. With reference to the variation in the figures in respect of the misappropriated amount between the charge and finding of the Court, I am of the view that the trial Court is correct in concluding that the accused had misappropriated Rs.23,420/-, since the said finding is on the basis of the available evidence on record. Merely because the prosecution was not able to produce materials to prove the charge in respect of the misappropriated amount of Rs.39,594/-, it cannot be held that the case of the prosecution must be rejected even in respect of the proved misappropriated amount.

17. It was nextly contended with vehemence that the sanction is invalid. This contention, in my view, has no basis. According to the prosecution, P.W.1 being the Head of the Department is the appointing authority and the removing authority. Even in the chief examination, P.W.1 would state that he is the removing authority and as such, he is the competent authority to grant sanction. This has been mentioned in Ex.P1 itself. But, his evidence has been challenged that the appointing authority is only General Administration Department and as such, the Superintending Engineer has no power to grant sanction. Unfortunately, the defence did not choose to put any suggestion to P.W.1 5, who is the Deputy Secretary, General Administration Department, who is said to be the appointing authority, according to the accused. As a matter of fact, there was no challenge in respect of sanction, while P.W.15 was examined.

18. Under Section 6(c) of the Prevention of Corruption Act, the person who is competent to remove can grant sanction. Even in the memorandum filed by the accused before the trial Court, while the arguments were advanced, the trial Court would refer to the same and conclude that the memorandum also would show that L.D.C. Bill Collectors were appointed only by the Head of the Department.

19. On going through the evidence of P.W.1 and Ex.P1, which clearly gives the details of the accusation against the accused, there is no difficulty in holding that P.W.1, who was the Superintending Engineer then, who was having control over the entire Electricity Department of the Pondicherry Union and who was competent to take disciplinary action and dismiss the L.D.C. Bill Collectors, would be competent to grant sanction and as such, the sancti on granted by him cannot be said to be invalid.

20. The decisions cited by the counsel for the appellant would not be of any help for the appellant, as, in my view, both sanction and the competence of P.W.1 to grant sanction have been validly proved. Under those circumstances, the conviction imposed on the appellant/ accused for the offence under Section 409 I.P.C. and Section 5(1)(c) read with 5(2) of the Prevention of

Corruption Act is liable to be confirmed and accordingly confirmed.

21. However, a direction to reimburse the amount of misappropriation, as conceded by the counsel for the respondent, is not warranted as there is no provision for giving such direction. Therefore, the said direction given by the trial Court asking the accused to reimburse the amount of misappropriation, namely Rs.23,420/- and the consequent default sentence is liable to be set aside and accordingly set aside.

22. The appellant has been sentenced to undergo R.I. for two years for the offence under Section 409 I.P.C. and R.I. for one year for the offence under Section 5(1)(c) read with 5(2) of the Prevention of Corruption Act. As the appellant being the public servant has lost his job in view of the conviction, in my opinion, the ends of justice would be met by reducing the sentence of imprisonment from two years to one year for the offence under Section 409 I.P.C., while sustaining the sentence of fine imposed for both the offences.

23. With the above modification in sentence, the appeal is dismissed. The trial Court is directed to secure the custody of the appellant/accused to undergo the remaining period of sentence.

Index: Yes
Internet:Yes

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To
1) The Special Judge, Pondicherry.
2) -do- the Chief Judge, Pondicherry.
3) The Special Public Prosecutor for CBI cases, Madras.

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